IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 33 OF 2003

M/S CHOWGULE AND COMPANY PVT. LTD.,MARMAGAO. ....Petitioner

Versus

RAMESH MARTOBA DALVI, PONDA-GOA AND ORS., ...Respondents

Ms.kamakxi Sambari, Shri S.usgaonkar For R.1,2,4,3c,6,5a,b,c,11a,11b

Coram:- V.C. DAGA, J.

Date:- 24th August, 2006

P.C.

This petition is directed against the order dated 10th April 2002 passed in Reg. Civil Suit No. 134/.2000 by the 2nd Additional District Judge, Panaji, whereby application under Order 6 Rule 17 of the CPC came to be allowed at the appellate stage of the proceeding. Shri Lotlikar,learned Senior Counsel appearing for the petitioner during the course of hearing urged that the impugned order is bad and is liable to be set aside in view of the law laid down by the Apex Court in the case of Gauri Shankar vs. Hindustan Trust Ltd. AIR 1972 SC 2091

2. Shri Usgaonkar, learned Senior Counsel appearing for the respondents in reply submitted that in view of the judgment of the Apex Court reported in AIR 1981 SC 1786 it would be open for the petitioner to challenge the impugned order if at all petitioner is required to challenge adverse judgmnent and decree of the Court below. in the higher Court.

3. In the above view of the matter, without examining merits or demerits of the impugned order, petition stands disposed of with liberty to the petitioner to challenge the impugned order in the event petitioner is

required to carry matter to the higher Court against the adverse judgment and order of the Court below. It is needless to mention that it would be open for the petitioner to raise all contentions with respect to amended part of the pleadings and the same shall not constitute waiver on the part of the petitioner to challenge the impugned order as indcated. All rival contentions in this behalf are kept open.

4. Petition stands disposed of in terms of this order with no order as to costs.

V.C. DAGA, J.

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